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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 120510052-3615-02]

RIN 0648-BC20

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic;
Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands;
Parrotfish Management Measures in St. Croix

AGENCY: National Marine Fisheries Service (NMFS), National
Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement management measures described in Regulatory Amendment 4 to the Fishery Management Plan for the Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands (FMP), as prepared by the Caribbean Fishery Management Council (Council). This rule establishes minimum size limits for parrotfish in the exclusive economic zone (EEZ) off St. Croix in the U.S. Virgin Islands (USVI). The purpose of this final rule is to provide protection from harvest to parrotfish and to assist the stock in achieving optimum yield (OY).

DATES: This rule is effective [insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: Electronic copies of the regulatory amendment, which includes an environmental assessment, a Regulatory Flexibility Act analysis, and a regulatory impact review may be obtained from the Southeast Regional Office Web Site at http://sero.nmfs.noaa.gov/sustainable_fisheries/caribbean/reef_fish/reg_am4/index.html.

FOR FURTHER INFORMATION CONTACT: Britni Tokotch, Southeast Regional Office, NMFS, telephone 727-824-5305; email: Britni.Tokotch@noaa.gov.

SUPPLEMENTARY INFORMATION: The reef fish fishery of Puerto Rico and the USVI is managed under the FMP, which was prepared by the Council and implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

On March 11, 2013, NMFS published a proposed rule for Regulatory Amendment 4 and requested public comment (78 FR 15338). The proposed rule and Regulatory Amendment 4 outline the rationale for the actions contained in this final rule. A summary of the actions implemented by this final rule is provided below.

Management Measure Contained in this Final Rule

This final rule establishes minimum size limits for parrotfish species in the EEZ off St. Croix. These limits apply to both the commercial and recreational sectors. This rule

establishes a minimum size limit of 8 inches (20.3 cm), fork length, for redband parrotfish (Sparisoma aurofrenatum), and 9 inches (22.9 cm), fork length, for all other parrotfish. The current harvest prohibition for midnight, blue, and rainbow parrotfish remains in effect.

This rule implements a minimum size limit of 9 inches (22.9 cm) for all but one of the parrotfish species for which harvest is allowed, because this size limit best captures the range of sizes at maturity for these species. This rule sets a minimum size limit of 8 inches (20.3 cm), fork length, for redband parrotfish because they are relatively smaller fish and they reach maturity at a smaller size than the other managed parrotfish species. A minimum size limit reduces mortality of smaller (generally female) parrotfish, thereby enhancing spawning biomass and the supply of gametes (especially eggs), and ultimately increasing yield-per-recruit from the stock (assuming discard mortality is low). Parrotfish discard mortality is assumed to be low because spears are the predominant gear used to harvest parrotfish and therefore the fish are individually targeted. In addition, discard mortality of parrotfish harvested by trap is expected to be low because parrotfish are harvested in relatively shallow waters, thus reducing the threat of barotrauma related mortality. A minimum size limit also reduces the likelihood of recruitment

overfishing that might otherwise lead to a stock biomass level below maximum sustainable yield. Therefore, this final rule sets a minimum size limit to increase the number of juvenile parrotfish that can reach sexual maturity and assist the stock in achieving OY.

Comments and Responses

NMFS received two comment submissions on Regulatory Amendment 4 and the proposed rule. NMFS received one submission that expressed general support for the actions contained in the proposed rule. We acknowledge this comment, but do not respond in detail. NMFS also received one submission from a Federal agency that included several specific comments. The comments from the Federal agency are summarized and responded to below.

Comment 1: The effects of the proposed size limits on the recreational and commercial sectors cannot be determined because of the admitted lack of information on the number of commercial and recreational fishers who harvest parrotfish in Federal waters. In addition, information on effort and catch per unit effort is not included in Regulatory Amendment 4, which means that catch and landings data cannot accurately be interpreted. This lack of information makes it impossible to determine whether the proposed size limits are necessary and appropriate for the conservation and management of the species.

Response: NMFS acknowledges that pertinent information on parrotfish biology, ecology, and harvest within the reef fish fishery in the U.S. Caribbean is limited. However, NMFS disagrees that this lack of information makes it impossible to determine whether the proposed minimum size limits are necessary and appropriate for the conservation and management of the species. National Standard 2 of the Magnuson-Stevens Act requires that NMFS and the Council use the best scientific information available. The maturity schedules used to inform the Council decisions on the appropriate minimum size limits for parrotfish species represent the best information presently available. Further, despite the level at which parrotfish may be harvested by any sector of the reef fish fishery, the Council concluded and NMFS agrees that the best scientific information available indicates that implementing the minimum size limits will help ensure that maturing females are given an opportunity to spawn at least once prior to potentially being harvested in the reef fish fishery. As more pertinent information becomes available, for any species of parrotfish presently managed in U.S. Caribbean Federal waters, the Council can reevaluate the minimum size limits and adjust them as necessary.

Comment 2: A report cited in Regulatory Amendment 4 as "SERO-LAPP-2012-02" was not available on the NMFS Southeast

Regional Office Web Site, making it difficult to determine where the numbers in the document originate.

Response: The final report in Regulatory Amendment 4 that is cited as SERO-LAPP-2012-02 describes analysis conducted by NMFS that estimates the percent reduction in landings that would occur if various minimum size limits were implemented in the U.S. Caribbean. This analysis was used in Regulatory Amendment 4 to evaluate some of the biological impacts of establishing the various minimum size limits considered in the amendment, which is one of many factors the Council considers as required by applicable law. The report was inadvertently not posted on the Southeast Regional Office Web Site but was readily available if requested. NMFS did not receive any requests for the report and it is now posted at http://sero.nmfs.noaa.gov/sustainable_fisheries/caribbean/reef_fish/reg_am4/index.html.

Comment 3: Regulatory Amendment 4 reads like a decision has already been made.

Response: When the Council voted to submit Regulatory Amendment 4 to NMFS for implementation, the Council was making a final decision on the preferred alternatives and the document submitted to NMFS reflects that decision. However, no final decision is made on whether to implement the actions in Regulatory Amendment 4 until NMFS determines that the

regulations submitted by the Council are consistent with the FMP, the Magnuson-Stevens Act, and other applicable laws, considers comments on the proposed rule, and publishes a final rule.

Comment 4: With the previous implementation of Caribbean parrotfish annual catch limits (ACLs) and accountability measures (AMs), the proposed minimum size limits are not necessary to prevent recruitment overfishing and may focus harvest on the larger older mature fish. The Council and NMFS should ensure that implementation of the parrotfish minimum size limits does not reduce reproductive output to the point of recruitment overfishing.

Response: NMFS disagrees that implementation of the parrotfish ACLs and AMs makes it unnecessary to establish a minimum size limit. The ACLs and AMs are intended to prevent overfishing but do not address the proportion of immature fish that are removed as part of the allowable harvest. Thus, even if landings remain under the ACL, immature individuals could still be harvested, which may result in recruitment overfishing. NMFS agrees that a minimum size limit can result in increased fishing pressure on larger fish. However, establishing a minimum size limit increases the likelihood that smaller individuals have an opportunity to reach maturity and contribute to the reproductive output of the population.

With respect to ensuring that the minimum size limits do not result in recruitment overfishing, the Council acknowledged that there is some uncertainty regarding the consequences of establishing minimum size limits for parrotfish. However, the Council determined, and NMFS agrees, that if new information indicates that the minimum size limits are resulting in unintended consequences, the Council can reevaluate the size limits and take appropriate action.

Comment 5: The length and complexity of Regulatory Amendment 4 likely makes it difficult for busy fishermen to read and understand.

Response: NMFS agrees that Regulatory Amendment 4 may be considered lengthy and that some information in the amendment is complex. However, the information in Regulatory Amendment 4 is necessary to comply with the requirements of the Magnuson-Stevens Act and other applicable law, such as the National Environmental Policy Act. To assist interested persons in understanding the actions in the amendment, the Council held public hearings throughout the U.S. Caribbean in July 2012. In addition, the establishment of parrotfish minimum size limits was discussed at several Council meetings, each of which was announced in the Federal Register, open to the public, and included a public comment period. There was no indication during the development of Regulatory Amendment 4 that fishermen

did not understand the proposed actions or the reasons why the Council selected the preferred alternatives.

Changes from the Proposed Rule

On April 17, 2013, NMFS published in the Federal Register an interim final rule to reorganize the regulations in 50 CFR part 622 for the Gulf of Mexico, South Atlantic, and the Caribbean (78 FR 22950). That interim final rule did not create any new rights or obligations; rather, it reorganized the existing regulatory requirements in the Code of Federal Regulations into a new format. This final rule incorporates this new format into the regulatory text; it does not change the specific regulatory requirements that were contained in the proposed rule. Therefore, as a result of this reorganization, the parrotfish minimum size limit regulatory text will be located at § 622.436(a) and (b) rather than § 622.37(a).

Classification

The Regional Administrator, Southeast Region, NMFS has determined that this final rule is necessary for the conservation and management of the species within Regulatory Amendment 4 and is consistent with the FMP, the Magnuson-Stevens Act, and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

A Final Regulatory Flexibility Analysis (FRFA) was prepared. The FRFA incorporates the initial regulatory flexibility analysis prepared for the proposed rule. A description of the action, why it is being considered and the legal basis for the rule are contained in the preamble of the proposed rule and in the preamble of this final rule. A summary of the FRFA follows. None of the public comments concerned the IRFA, and there are no changes in this final rule as a result of public comment. Therefore, there are no changes in the estimates of either the number of small businesses affected or the potential adverse economic impacts.

This final rule will affect up to 80 percent (142) of St. Croix, USVI, licensed commercial fishermen, and every licensed fisherman is assumed to represent a small business in the Finfish Fishing Industry (NAICS 114111). The 142 small businesses are largely minority owned and managed businesses and are divided by full-time versus part-time enterprises and by gear used to catch fish.

Each of the small businesses will have to obtain a measuring tool and use it to ensure that the parrotfish species they keep and land are equal to or greater in size than the minimum size limit. Any individual fish less than the minimum size limit will have to be discarded. Thus, the adverse impacts

of this rule are divided into four parts: 1) cost of obtaining the measuring tool; 2) additional time-related trip costs to use the tool; 3) loss of revenue from fish that now have to be discarded because they are undersized; and 4) additional fuel, bait and gear costs if fishermen act to mitigate for above losses of revenue.

A measuring tool is estimated to cost from \$5 to \$10, and the total cost to 142 businesses to acquire the tool would be from \$710 to \$1,420. The use of the measuring tool will impose to the fishers an additional 4 to 5 seconds per parrotfish caught; however, the frequency of its use will be dependent on both the current sizes of parrotfish that are landed and the gear used to harvest parrotfish. Three different scenarios are presented to represent the range of the potential adverse economic impacts beyond the \$5 to \$10 cost of acquiring the tool.

In the first scenario, it is theorized that, as a result of the recently imposed St. Croix parrotfish ACL of 240,000 lb (108,863 kg), round weight, all commercial fishermen have foregone catching and landing smaller parrotfish so as to minimize the cost of producing those 240,000 lb (108,863 kg) (76 FR 82404, December 30, 2011). In this scenario, all commercial fishermen are presently catching and landing larger parrotfish that are visibly greater than the minimum size limit and rarely,

if at all, are catching any that will require a measurement. If true, the final rule will have little to no adverse economic impact beyond the \$5 to \$10 cost of acquiring a measuring tool and an additional 4 to 5 seconds needed to measure a rare small fish.

In the second scenario, it is assumed that commercial fishermen are not catching and landing larger parrotfish, and they cannot mitigate for losses of landings due to discarded undersized fish. If true, this final rule will result in an estimated total annual loss of parrotfish landings between 960 lb (435 kg) and 13,920 lb (6,314 kg). If the average ex-vessel price were \$5 per pound, the total annual revenue loss would be between \$4,800 and \$69,600, and the average revenue loss per small business would be from approximately \$34 to \$490 per year. Added to the loss of annual revenue will be higher time-related trip costs, especially fuel costs, because it takes 4 to 5 seconds to measure each of the parrotfish that are caught. The magnitudes of the revenue loss and additional trip costs will not be distributed equally among parrotfish harvest methods. Because pot-and-trap fishermen have landed the greatest percentage of smaller parrotfish compared to other methods of harvest, they will experience the greatest percent losses of annual revenues and greatest increase in time-related trip costs.

In the third scenario, fishermen are presumed to act to mitigate for potential losses of parrotfish landings by increasing fishing time and any bait and/or gear costs so that they catch enough legally sized parrotfish or other species to offset the pounds discarded in undersized parrotfish. In this third scenario, annual landings and revenues from those landings will be the same as baseline landings and revenues, but the costs of producing the landings increase. It is expected that small businesses that use pots and traps will incur the greatest increases in fuel, bait, and gear costs to mitigate for potential losses of parrotfish landings and revenues.

The second and third scenarios show disproportionate adverse economic impacts on fishermen who use pots and traps to catch parrotfish. It is unknown if the disproportionate adverse impacts also represent disproportionate adverse impacts on small businesses that are either owned and/or managed by individuals of a specific race, ethnicity, or age, located within a small geographic area of St. Croix, or differentiated by business size.

Considered, but rejected, alternatives would have established larger minimum size limits for parrotfish in the St. Croix EEZ and caused larger adverse economic impacts. Also among the considered, but rejected, alternatives were establishing minimum size limits for parrotfish in the areas of

the EEZ off Puerto Rico and St. Thomas/St. John, USVI, which would have increased the number of small businesses regulated and the magnitude of the adverse economic impacts.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as small entity compliance guides. As part of the rulemaking process, NMFS prepared a fishery bulletin, which also serves as a small entity compliance guide. The fishery bulletin will be sent to all interested parties.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Minimum size limit, Parrotfish, St. Croix, Virgin Islands.

Dated: July 25, 2013.

Alan D. Risenhoover, Director, Office of Sustainable Fisheries,
performing the functions and duties of the Deputy Assistant Administrator
for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622--FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 et seq.

2. In § 622.436, paragraph (a) is revised and paragraphs (b) and (c) are added to read as follows:

§ 622.436 Size limits.

* * * * *

(a) Yellowtail snapper. The minimum size limit for yellowtail snapper is 12 inches (30.5 cm), TL.

(b) Parrotfishes. The minimum size limit for parrotfishes, except for redband parrotfish, in the St. Croix Management Area only (as defined in Table 2 of Appendix E to Part 622) is 9 inches (22.9 cm), fork length. See § 622.434(c) for the current prohibition on the harvest and possession of midnight parrotfish, blue parrotfish, or rainbow parrotfish.

(c) Redband parrotfish. The minimum size limit for redband parrotfish in the St. Croix Management Area only (as defined in Table 2 of Appendix E to Part 622) is 8 inches (20.3

cm), fork length.

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